# INDEX.

## SUBJECT INDEX.


| | Page |
|---|---|
| Statement as to jurisdiction | |
| Statutory provisions sustaining jurisdiction | 1 |
| Statute of State the validity of which is involved | 1 |
| Date of judgment and of application for appeal | 2 |
| Nature of case and ruling of court | 3 |
| Cases believed to sustain the jurisdiction | 3 |
| | 7 |


## TABLE OF CASES CITED.


| | |
|---|---|
| American Sugar Refining Co. v. New Orleans, 181 U. S. 277 | 7 |
| Atlantic Coast Line Ry. Co. v. Goldsboro, 232 U. S. 548 | 7 |
| Arkadelphia Miller Co. v. St. Louis Southwestern Railway Co., 249 U. S. 134 | 7 |
| Williams v. Norris, 12 Wheat. 117 | 7 |
| Wilson v. Blackbird Creek Marsh Co., 2 Pet. 251 | 7 |
| Zucht v. King, 260 U. S. 174 | 7 |


## STATUTES AND AUTHORITIES CITED.


| | |
|---|---|
| Constitution of the United States, Article 1, Section 8 | 5 |
| General Laws of Minnesota for the year 1889, Chapter 221, as amended by Chapter 89, General Laws of Minnesota for the year 1905 | 2 |
| Judicial Code, Section 240, as amended by the Act of February 13, 1925 (28 U. S. C. A. 374 b), and by the Act of January 31, 1928, and the Act of April 26, 1928 (28 U. S. C. 861a and 861b) | 7 |
| United States Code, Title 28, Section 347(b) | 2 |
| Webster-Ashburton Treaty of August 22, 1842, Article II (8 Stat. 572) | 5, 6 |

SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1933**

---

# No. 126

---

PIGEON RIVER IMPROVEMENT, SLIDE & BOOM COMPANY, APPELLANT,

*vs.*

CHARLES W. COX, LIMITED.

---

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

---

## JURISDICTIONAL STATEMENT.

---

The appellant, Pigeon River Improvement, Slide & Boom Company, in support of the jurisdiction of the Supreme Court of the United States to review, upon appeal, the judgment and decision of this Court in the above entitled cause, respectfully represents:

I.

**Statutory Provision Sustaining Jurisdiction.**

"Any case in a Circuit Court of Appeals where is drawn in question the validity of a

statute of any State, on the ground of its being repugnant to the Constitution, Treaties or Laws of the United States, and the decision is against its validity, may, at the election of the party relying on such state statute, be taken to the Supreme Court, for review on writ of error or appeal; * * * and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case." 28 U. S. C. 347(*b*).

## II.

**Statute of State the Validity of Which is Involved.**

The statute of the State of Minnesota, the validity of which is here involved, is Chapter 221, General Laws of Minnesota for the year 1889, as amended by Chapter 89, General Laws of Minnesota for the year 1905, which, summarizing its pertinent provisions, provides, among other things:

That any corporation formed thereunder may take prior possession of any stream by the construction of works in aid of driving logs thereon and may improve such stream by clearing and straightening channels, closing sloughs, and by building sluiceways, booms, side, rolling, sluicing and flooding dams: That any such company which shall so improve a stream and keep in repair and operate its works as to render the driving of logs therein reasonably practicable may collect reasonable and uniform tolls upon all logs and timber driven, sluiced or floated thereon. That any such corporation organized for the improvement of any stream forming wholly or in part the boundary

line between Minnesota and an adjoining state or country may unite with any similar corporation formed under the laws of such adjoining state or country for the better accomplishment of the purposes of its organization either by ownership of stock therein, consolidation therewith, or otherwise. That such corporation may acquire necessary rights by purchase or eminent domain, and that such corporation is a public service corporation to the extent that it must serve the public equally and reasonably and for reasonable compensation.

III.

**Date of Judgment and of Application for Appeal.**

The judgment and decision of the Circuit Court of Appeals of the United States for the Eighth Circuit which is sought to be reviewed was entered on February 17, 1933.

Application for appeal is dated May 11, 1933, and was presented on May 12, 1933.

IV.

**Nature of Case and Ruling of Court.**

The above appellant in an amended complaint sued at law for $8,566.44, alleging that amount to be its reasonable and uniform tolls to which it is entitled for the use by appellee of works constructed and maintained by it in portion of Pigeon River lying within the State of Minnesota so as to make the driving of logs and timber therein reasonably practicable. The complaint further alleges that appellant was incorporated on September 3, 1898, pursuant to the above

statute and to a charter given it by the State of Minnesota expressly authorizing it to exercise rights under said statutes on the portion of Pigeon River lying on the Minnesota side of the international boundary which traverses the river at approximate midstream; that at that time no other corporation had been formed for such purpose and appellant therefore took prior possession of the American side of the river and improved it by clearing and straightening channels, closing sloughs and constructing sluiceways, booms, side, rolling, sluicing and flooding dams; at the same time another corporation, Arrow River & Tributaries Boom & Slide Company, was chartered under the laws of the Province of Ontario with similar purposes and powers on the Canadian side of the river. The two companies, acting together, constructed their works and made their improvements so that those of each constituted complements of those of the other by joint action pursuant to agreement between them, they having each ever since kept their improvements in repair and so operated their respective works on the river as to render the driving of logs and timber therein reasonably practicable. The complaint further alleges that in the Spring of 1928 appellee owned a large quantity of logs and timber which it put into the river at the point where Arrow River empties into it and drove the same downstream to the river's mouth, making use and securing the benefit of appellant's improvements in so doing. In the Spring of 1929 and again in the Spring of 1930, appellee made similar drives and it is the tolls for these three drives which are sought to be recovered.

The case, being pending in the District Court of the United States for the District of Minnesota, Fifth Division, appellee demurred to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action. The lower court sustained the demurrer and entered a final judgment of dismissal.

The appellant thereupon appealed to this Court, which, on February 17, 1933, entered its decision and judgment sustaining the lower court.

The ruling and holding of this Court was:

(*a*) That the Statutes above quoted are invalid by reason of their repugnancy to the Commerce Clause, Section 8 of Article I of the Constitution of the United States.

(*b*) That said statutes are invalid by reason of their repugnancy to Article II of the Webster-Ashburton Treaty of August 22, 1842.

(*c*) That the Commerce Clause of the Constitution of the United States has the effect of preventing appellant from collecting tolls under the facts as alleged in the complaint for appellee's use of appellant's works, notwithstanding that they are located wholly within the boundaries of the State of Minnesota and are constructed and maintained and the right to collect such tolls is expressly conferred upon appellant by its charter from the State of Minnesota, pursuant to the above mentioned statutes.

(*d*) That Article II of the Webster-Ashburton Treaty of August 22, 1842, 8 United States Statutes

at Large 572, prevents appellant from collecting tolls under the facts as alleged in the complaint for appellee's use of appellant's works, notwithstanding that they are located wholly within the boundaries of the State of Minnesota and are constructed and maintained and the right to collect such tolls is expressly conferred upon appellant by its charter from the State of Minnesota, pursuant to the above mentioned statutes.

(*e*) That that portion of Article II of the Webster-Ashburton Treaty providing that all the water-communications and usual portages along the boundary from Lake Superior to Lake of the Woods and Grand Portage from Lake Superior to Pigeon River "as now actually used" shall be free and open to the use of the citizens and subjects of both countries, applies to the portion of Pigeon River wherein appellant's works are situated, it being appellant's claim that those portions of the river were not at the time of the making of the Treaty "water-communications" nor "actually used," nor had they ever been, and that the clause of the Treaty in question does not apply to such portions of the river, the Court further holding that that clause so applied prevented the relief sought in the action.

(*f*) That the words "free and open" as used in that clause of the Treaty had the effect of preventing the collection of tolls and the relief sought in the action, it being appellant's claim that the phrase "free and open" meant simply "common to the citizens and subjects of both countries," or "open to the use and en-

joyment of the citizens of both countries on equal terms''; in other words, without discriminatory tolls or charges against the citizens of either.

(*g*) That the movement by a Canadian citizen of Canadian pulpwood on Pigeon River was foreign commerce, over which the State of Minnesota could not exercise control to the extent above mentioned, it being appellant's claim that there was no question of interference with foreign commerce under the allegations of the complaint.

## V.

### Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction on appeal to the Supreme Court of the United States.

*Williams* v. *Norris*, 12 Wheat. 117.

*American Sugar Refining Co.* v. *New Orleans*, 181 U. S. 277.

*Zucht* v. *King*, 260 U. S. 174.

*Atlantic Coast Line Ry. Co.* v. *Goldsboro*, 232 U. S. 548.

*Arkadelphia Milling Co.* v. *St. Louis Southwestern Railway Co.*, 249 U. S. 134.

*Wilson* v. *Blackbird Creek Marsh Co.*, 2 Pet. 251.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal, by virtue of Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (now Section 374*b* of Title 28 of the United States Code (28 U. S. C.

374*b*)), and as further amended or modified by the Act of January 31, 1928, and the Act of April 26, 1928 (28 U. S. C. 861*a*, 861*b*).

Dated May 11, 1933.

Respectfully submitted,

JOHN D. JENSWOLD,
*Attorney for Appellant,*
*Suite 703 Palladio Bldg., Duluth, Minn.*

JENSWOLD, JENSWOLD & DAHLE,
*Of Counsel,*
*Suite 703 Palladio Bldg.,*
*Duluth, Minn.*

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Statement as to jurisdiction | |
| Statutory provisions sustaining jurisdiction | 1 |
| Statute of State the validity of which is involved | 1 |
| Date of judgment and of application for appeal | 2 |
| Nature of case and ruling of court | 3 |
| Cases believed to sustain the jurisdiction | 3 |
| | 7 |


## Table of Cases Cited.


| | |
|---|---|
| American Sugar Refining Co. v. New Orleans, 181 U. S. 277 | 7 |
| Atlantic Coast Line Ry. Co. v. Goldsboro, 232 U. S. 548 | 7 |
| Arkadelphia Miller Co. v. St. Louis Southwestern Railway Co., 249 U. S. 134 | 7 |
| Williams v. Norris, 12 Wheat 117 | 7 |
| Wilson v. Blackbird Creek Marsh Co., 2 Pet. 251 | 7 |
| Zucht v. King, 260 U. S. 174 | 7 |


## Statutes and Authorities Cited.


| | |
|---|---|
| Constitution of the United States, Article 1, Section 8 | 5 |
| General Laws of Minnesota for the year 1889, Chapter 221, as amended by Chapter 89, General Laws of Minnesota for the year 1905 | 2 |
| Judicial Code, Section 240, as amended by the Act of February 13, 1925 (28 U. S. C. A. 374 b), and by the Act of January 31, 1928, and the Act of April 26, 1928 (28 U. S. C. 861a and 861b) | 7 |
| United States Code, Title 28, Section 347(b) | 2 |
| Webster-Ashburton Treaty of August 22, 1842, Article II (8 Stat. 572) | 5, 6 |